

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary  
Immediate Suspension of the Family  
Child Care License of Julie Degnan  
To Provide Family Day Care under  
Minn. R. pts. 9502.0300 to 9502.0445

**FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on February 14, 2007, at the Winona County Office Building, 202 West Third Street, Winona, Minnesota 55987. The OAH record closed at the end of the hearing on February 14, 2007.

Susan E. Cooper, Assistant Winona County Attorney, Winona County Courthouse, 171 West Third Street, Winona, Minnesota 55987, appeared on behalf of the Department of Human Services. The licensee, Julie Degnan, appeared on her own behalf without counsel.

**STATEMENT OF THE ISSUES**

1. The principal issue is whether the Department of Human Services' order of immediate suspension of Julie Degnan's family day care license should be continued.
2. Does reasonable cause exist to believe that Julie Degnan's actions or inactions constitute a failure to comply with applicable law or rule now pose an imminent risk of harm to the health, safety, or rights of children served by her?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Since August 26, 1996, Julie Degnan ("Ms. Degnan") has been licensed to provide family child care services. She was relicensed on July 27, 2006, to care for up to 10 children (no more than two infants) at her home at 404 Northern Hills Court, St. Charles, Minnesota, Winona County, Minnesota 55972 ("the home").<sup>[1]</sup>
2. On July 27, 2006, Ms. Nancy Prodzinski, Day Care Licensor and Financial Worker for Winona County Human Services, conducted Ms. Degnan's annual licensing inspection. She did not ask for a crib inspection report or evidence of SIDS training

because Ms. Degnan was caring for no infants at that time.<sup>[2]</sup> Prior to the infant CS (the infant involved in this matter) the last time Ms. Degnan cared for an infant was in the year 2000.<sup>[3]</sup>

3. On short notice on or about December 26, 2006, Ms. Degnan agreed to care for two children from a new family, CS (a 3 month old infant) and PS (a 3 year old), and gave their parents the required admissions and arrangements forms, contact forms for parents, physicians, dentists, and names of persons permitted to pickup the children from the day care. The parents had not returned the forms as of January 9, 2007.<sup>[4]</sup>

4. Ms. Degnan had two cribs to use for infant CS. The newer one was upstairs in the home, has a model number, and is not listed as an unsafe device on the website of the Consumer Product Safety Commission.<sup>[5]</sup> The older one was downstairs in the home and has no model number on it.<sup>[6]</sup>

5. Ms. Degnan, although familiar with Sudden Infant Death Syndrome ("SIDS") due to personal family experiences, was not current, as of on January 9, 2007, on formal training required by DHS for her license for Sudden Infant Death Syndrome ("SIDS").<sup>[7]</sup>

6. As of January 9, 2007, Ms. Degnan had not prepared a monthly crib inspection report for the old crib.<sup>[8]</sup>

7. SIDS training recommends that infants be placed on their backs for sleeping.<sup>[9]</sup>

8. On the afternoon of June 9, 2007, Ms. Degnan placed CS on her back in the old crib and put the other children down for their naps.<sup>[10]</sup>

9. After the other children has awakened from their naps, at approximately 3:45 p.m., Ms. Degnan prepared a bottle for CS and then went to CS's bedroom at approximately 4:15 and found her with blue lips, not breathing. She told her daughter to call 911 as she picked up CS and administered CSR. However, CS did not respond.

10. CS died and was not revived. CS's death was from an undetermined cause as of January 14, 2007, although CS's parents have told Ms. Degnan that it was likely a SIDS death.<sup>[11]</sup>

11. During a January 10, 2007, visit with Ms. Degnan at the home, Ms. Nancy Prodzinski, Day Care Licenser and Financial Worker for Winona County Human Services asked for admissions and arrangements forms for CS and PS, a monthly crib inspection checklist sheet, and SIDS training forms. Ms. Degnan did not have those items.

12. As a result of this inspection visit, Ms. Prodzinski issued a correction order requiring Ms. Degnan to correct the crib checklist form and admissions and arrangements form deficiencies.<sup>[12]</sup>

13. As of January 14, 2007, Ms. Degnan has:
  - a. replaced the old crib with a new one that has a model number, and is not listed as an unsafe device on the website of the Consumer Product Safety Commission; and
  - b. provided the licensor the necessary crib checklist form; and
  - c. provided the licensor necessary admissions and arrangements forms; and
  - d. completed on-line SIDS training, but hasn't paid the \$10.00 fee to receive a verification certificate of the training.<sup>[13]</sup>

### **Procedural Findings**

14. On January 9, 2007, Ms. Nancy Prodzinski, Daycare Licensor for Winona County Department of Human Services, opened a file after she received a law enforcement report that a child had died in a day care.<sup>[14]</sup>

15. After returning from the January 10, 2007, visit with Ms. Degnan, Ms. Prodzinski consulted with individuals at the Department of Human Services ("DHS"). By the end of the day on the 10th, the County made a preliminary determination that there was an imminent danger to the children in the daycare home because of the infant death, unapproved crib, and lack of SIDS training, resulting in a recommendation to DHS that a temporary immediate suspension be issued while the investigation continued.<sup>[15]</sup>

16. The Department issued an order of temporary immediate suspension on January 11, 2007, and it was served on Ms. Degnan that same day.<sup>[16]</sup>

17. Ms. Degnan filed a timely appeal from the order of temporary immediate suspension and requested an appeal hearing pursuant to Minn. Stat. § 245A.07, subd. 2a.<sup>[17]</sup>

18. On January 17, 2007, Jerry Kerber, Director, Division of Licensing, Minnesota Department of Human Services, executed a Notice of and Order for Hearing scheduling a contested case hearing on February 14, 2007.<sup>[18]</sup>

19. On February 2, 2007, the Administrative Law Judge issued a Protective Order, which was served upon the parties by mail on that day.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

## CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subds. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. Pursuant to Minn. Stat. § 245A.07, subd. 2., in order to sustain a temporary immediate suspension, the Department must show that reasonable cause exists to believe that Ms. Degnan's failure to comply with applicable law or rule poses a current imminent risk of harm to the health, safety, or rights of persons served by Ms. Degnan.

5. "Imminent danger" means a child or vulnerable adult is threatened with immediate and present abuse or neglect that is life threatening or likely to result in abandonment, sexual abuse, or serious physical injury."<sup>[19]</sup>

6. When a temporary immediate suspension is appealed, the scope of the appeal hearing is limited solely to the issue of whether the temporary immediate suspension "should remain in effect" pending a final order issued on a subsequent licensing sanction. Further, the burden of proof is limited to the Commissioner's demonstration that reasonable cause "exists" to believe that the license holder's actions or failure to comply with applicable law or rule "poses" an imminent risk of harm to the health, safety, or rights to those served by the licensee. Thus, the Administrative Law Judge is required to address the current situation and not only whether the temporary immediate suspension was properly issued at the time and not just whether reasonable cause existed at the time the temporary immediate suspension was issued.

7. At the time of the January 11, 2007, temporary immediate suspension order, the Department had demonstrated "reasonable cause" to issue the immediate suspension of Ms. Degnan's day care license, because reasonable cause existed to believe that Ms. Degnan failed:

- a. to have an approved crib for infant CS when she was sleeping; and
- b. to follow the recommendations presented in the Sudden Infant Death Syndrome (SIDS) training she should have received.

8. Minnesota Rules part 9502.0425, Subp. 9 provides:

**"Infant and newborn sleeping space.** There must be a safe, comfortable sleeping space for each infant and newborn. A crib, portable crib, or playpen with waterproof mattress or pad must be provided for each infant or newborn in care. The

equipment must be of safe and sturdy construction that conforms to volume 16, parts 1508 to 1508.7 and parts 1509 to 1509.9 of the Code of Federal Regulations, its successor, or have a bar or rail pattern such that a 2-3/8 inch diameter sphere cannot pass through. Playpens with mesh sidings must not be used for the care or sleeping of infants or newborns.”

9. The old crib is subject to the provisions and requirements of the above-cited federal rules.<sup>[20]</sup>

10. Ms. Degnan violated this rule by using a crib for infant sleeping space that could not be ruled out as a non-compliant crib. Without a model number, there is no way to confirm or rule out non-compliance. Ms. Degnan presented no evidence that the crib did have a bar or rail pattern such that a 2-3/8 inch diameter sphere cannot pass through.<sup>[21]</sup>

11. Minn. Stat. § 245A.144 requires license holders such as Ms. Degnan to ensure that persons assisting in the care of infants receive training on reducing the risk of Sudden Infant Death Syndrome. Ms. Degnan followed its recommendations on January 9, 2007, when she put CS into the crib, and has subsequently received the required training.<sup>[22]</sup>

12. The actual cause of CS’s death has not been determined.<sup>[23]</sup>

13. The Department has demonstrated “reasonable cause” exists to believe that, on February 14, 2006, children in Ms. Degnan’s care could be at imminent risk of harm, and therefore the immediate suspension of Ms. Degnan’s day care license should remain in effect until a final licensing sanction, if any, is determined.

14. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

15. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

The temporary immediate suspension of the family day care license of Ms. Julie Degnan be continued.

Dated: February 26, 2007

s/M. Kevin Snell

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M. Kevin Snell  
Administrative Law Judge

Reported: Tape recorded (one (1) tape); no transcript prepared.

## **NOTICES**

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

At this stage, the Commissioner of Human Services is not required to prove that violations actually occurred. Instead, at this stage, the Commissioner must only prove that there is reasonable cause to believe that the health, safety or rights of persons in the Ms. Degnan' care are at imminent risk. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying charges.

During an expedited hearing regarding a temporary immediate suspension, the Commissioner must only present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The statute governing family day care does not specifically define what is meant by reasonable cause to suspend a license. The Department is entitled to rely on hearsay evidence linking the license holder (or a person present during the hours that children are in care) to an act that puts children at risk of imminent harm. The term "imminent harm" also is not defined in the statute or day care rules, but other rules adopted by the Commissioner define the term "imminent danger" to encompass situations in which a child is threatened with immediate and present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury. Although this definition is not binding, it is instructive.

The Administrative Law Judge, at this stage of the process, is not required to assess the relative credibility of conflicting testimony, but rather is to determine whether there is enough evidence to maintain the suspension.

All parties agree that any potential SIDS death is a tragedy. The Legislature recognized that SIDS deaths can be reduced (but not totally avoided) if persons caring for infants receive appropriate training. It therefore determined to require that all persons in licensed facilities who are caring for infants must receive appropriate training. Ms. Degnan had not had, at least within the past 5 years, the required training prior to CS's death. She did follow the SIDS training recommendations by putting CS on her back when she put her down to sleep on January 9, 2007.

When the evidence offered by the Commissioner is reviewed in light of the modest "reasonable cause" standard of proof, it is concluded that the evidence is sufficient to establish reasonable cause to continue the temporary immediate suspension. The Commissioner was entitled to make a preliminary determination, based upon use of an unapproved crib, the unknown cause of CS's death, and deficiencies of required documentation, thereby posing a continuing risk of harm and requiring an immediate temporary suspension of the child care license.

Ms. Degnan has, prior to the hearing, removed and replaced the illegal crib with a new, compliant crib. She has completed the SIDS training online, and can receive the appropriate evidence of such training. She has received and submitted to the licensor the AA forms and completed and submitted crib inspection reports. However, the key factor, the unknown cause of CS's death, was unchanged at the time of the hearing.



CS's death has not been formally diagnosed as a SIDS death. We have no autopsy report or final law enforcement reports. At this point it is unknown whether there is physical evidence that would be inconsistent with a SIDS death, such as: gross trauma, shaken baby syndrome, historical signs of abuse; or evidence of inborn error of metabolism, suffocation, viruses, bacteria, natural or traumatic disease. Because of these many uncertainties, it cannot be determined that the Department failed to show reasonable cause for its actions. This unknown can reasonably be considered "imminent danger," where a child could be threatened with immediate and present neglect that is life threatening or likely to result in serious physical injury.

The Administrative Law Judge finds that the Commissioner does, at this time, have reasonable cause to continue the suspension.

M.K.S.

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<sup>[1]</sup> Testimony of Julie Degnan and Nancy Prodzinski.

<sup>[2]</sup> *Id.*

<sup>[3]</sup> *Id.*

<sup>[4]</sup> Test. of Julie Degnan.

<sup>[5]</sup> *Id.*

<sup>[6]</sup> Test. of Julie Degnan and Nancy Prodzinski.

<sup>[7]</sup> *Id.*

<sup>[8]</sup> *Id.*

<sup>[9]</sup> Test. of Julie Degnan.

<sup>[10]</sup> *Id.*

<sup>[11]</sup> *Id.*

<sup>[12]</sup> Test. of Nancy Prodzinski.

<sup>[13]</sup> Test. of Julie Degnan.

<sup>[14]</sup> Test. of Nancy Prodzinski.

<sup>[15]</sup> *Id.*, Ex. 1.

<sup>[16]</sup> Ex. 2 and Test. of Nancy Prodzinski.

<sup>[17]</sup> Notice and Order for Hearing.

<sup>[18]</sup> *Id.*

<sup>[19]</sup> Minn. Rule pt. 9543.1010, subp. 8.

<sup>[20]</sup> Sec. 1509.2 Definitions. For the purposes of this part 1509: (a) Crib or baby crib means a bed designed to provide sleeping accommodations for an infant. . . .

<sup>[21]</sup> Minn. Rule pt. 9543.1010, subp. 8.

<sup>[22]</sup> Findings of Fact 8, 13.

<sup>[23]</sup> Test. of Ms. Degnan.